

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and Iowa Code sections 452A.59 and 452A.76, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," to rescind Chapter 63, "Administration," Chapter 64, "Motor Fuel," and Chapter 65, "Special Fuel," and to amend Chapter 67, "Administration," Chapter 68, "Motor Fuel and Undyed Special Fuel," and Chapter 231, "Exemptions Primarily of Benefit to Consumers," Iowa Administrative Code.

Item 1 amends subrule 18.37(5) to replace the outdated term "gasohol" with the updated term "ethanol."

Item 2 rescinds 701—Chapter 63, "Administration," Chapter 64, "Motor Fuel," and Chapter 65, "Special Fuel." Iowa Code chapter 452A was rewritten in 1995 by House File 552, chapter 155, during the 1995 legislative session and became effective January 1, 1996. Also effective January 1, 1996, Chapter 63 was replaced by Chapter 67; Chapter 64 was replaced by Chapter 68; and Chapter 65 was replaced by Chapter 69. The administrative rules contained in 701—Chapters 63 to 65 were maintained for audit purposes. The Department has determined that these rules should be rescinded at this time.

Item 3 amends rule 701—67.1(452A), definition of "supplier," to include persons who produce or acquire biofuel or biodiesel for storage at and distribution from a terminal.

Item 4 amends the implementation clause for rule 701—67.1(452A).

Item 5 amends rule 701—67.23(452A) by adding new subrule 67.23(5), which authorizes the Director to regard a person or facility in possession of fuel products as a person or facility defined in Iowa Code section 452A.2.

Item 6 amends Chapter 67 by adding new rule 701—67.27(452A). This new rule requires the Department to report the number of gallons of retail fuel sales, by classification, to the Governor and the Legislative Services Agency by April 1 of each year.

Item 7 amends subrule 68.2(1) to show the change in the tax rate for gasoline from 20.7 cents to 21 cents for the fiscal year beginning July 1, 2008, and ending June 30, 2009.

Item 8 amends subrule 231.2(1) to replace the outdated term "gasohol" with the updated term "ethanol."

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 27, 2008, to the Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, or at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 14, 2008. Such written comments should be directed to the Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 17, 2008.

These amendments are intended to implement Iowa Code sections 452A.2(35), 452A.33(2), and 452A.59 as amended by 2008 Iowa Acts, Senate File 2400, sections 62, 63, and 64.

The following amendments are proposed.

ITEM 1. Amend subrule 18.37(5) as follows:

18.37(5) ~~Gasohol~~ Ethanol. For tax periods after April 30, 1981. Retail sales of ~~gasohol~~ ethanol are exempt from Iowa sales or use tax.

ITEM 2. Rescind and reserve **701—Chapter 63, 701—Chapter 64701—Chapter 65.**

ITEM 3. Amend rule **701—67.1(452A)**, “Supplier,” as follows:

“*Supplier*” means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. “Supplier” includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. “Supplier” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

ITEM 4. Amend rule **701—67.1(452A)**, as follows:

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 452A.2 and 452A.59 as amended by ~~2006~~ 2008 Iowa Acts, ~~chapter 1142, and section 452A.3~~ Senate File 2400.

ITEM 5. Adopt the following new subrule 67.23(5):

67.23(5) *Efficient administration of motor fuel laws.* When in the opinion of the director it is necessary for the efficient administration of Iowa Code chapter 452A, the director may regard persons or facilities in possession of motor fuel, special fuel, biofuel, alcohol, or alcohol derivative substances as blenders, dealers, eligible purchasers, exporters, importers, restrictive suppliers, suppliers, terminal operators, or nonterminal storage facility operators. The department will notify the person or facility of the various requirements under the motor fuel tax laws and will ensure that a license is issued.

ITEM 6. Adopt the following new rule 701—67.27(452A):

701—67.27(452A) Retailer gallons report. The department is required to compile information reported to it by retail dealers regarding the number of gallons of the various fuel classifications sold by retail dealers in the previous calendar year and submit a report to the governor and the legislative services agency by April 1 of each year. Each retail dealer is required to file a report with the department detailing the number of gallons sold during the previous calendar year as required by the department. The retail dealer report is due by January 31 following the close of the calendar year.

The report filed by the department will include information in the aggregate relating to total sales of gasoline, ethanol blended gasoline, diesel fuel and biofuels. The report will also include appropriate

percentage sales of various fuel products. The report will not include individual retail dealer information, trade secret information or confidential information.

This rule is intended to implement Iowa Code section 452A.33(2) as amended by 2008 Iowa Acts, Senate File 2400.

ITEM 7. Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢ per gallon (for July 1, 2004, through June 30, 2005)
	20.7¢ per gallon (for July 1, 2005, through June 30, 2006)
	21¢ per gallon (for July 1, 2006, through June 30, 2007)
	20.7¢ per gallon (for July 1, 2007, through June 30, 2008)
	<u>21¢ per gallon (for July 1, 2008, through June 30, 2009)</u>
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through June 30, 2008 <u>2009</u>)
E-85 gasoline	17¢ per gallon beginning January 1, 2006, through June 30, 2007
	19¢ per gallon (for July 1, 2007, through June 30, 2008 <u>2009</u>)
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22.5¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

ITEM 8. Amend subrule 231.2(1) as follows:

231.2(1) *In general.* The sales price from the sale of motor fuel, including ~~gasohol~~ ethanol, and special fuel is exempt from sales tax under 2005 Iowa Code section 423.3(55) if (a) the fuel is consumed for highway use, in watercraft, or in aircraft, (b) the Iowa fuel tax has been imposed and paid, and (c) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.